

U.S. Pat. App. Ser. No. 10/572,692
Attorney Docket No. 10191/4309
Reply to Office Action of October 1, 2008

AMENDMENTS TO THE DRAWINGS:

The attached sheet of drawing, which includes a formal drawing of Fig. 3, replaces the previous version of Fig. 3 which contained hand-written numbers.

Attachment: Replacement sheet

REMARKS

Claims 11-13, 16, and 18-20 are pending in the present application after cancellation of claims 14, 15 and 17. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration of the present application is respectfully requested.

Applicant thanks the Examiner for accepting all priority claims and for considering the previously filed Information Disclosure Statements, PTO-1449 papers and cited references.

Applicant is submitting a replacement formal drawing for Fig. 3, which previously contained hand-written numbers.

Applicant has amended the specification to correct obvious typographical errors.

Claims 11-14 and 19 were rejected on the ground of non-statutory, obviousness-type double patenting as being unpatentable over claims 1 to 6, 18, and 19 of U.S. Patent No. 7,400,266 (“Haug”). While Applicant does not agree with the rejection, in order to expedite prosecution of the present application, Applicant is submitting an executed terminal disclaimer to overcome the double-patenting rejection. Withdrawal of the obviousness-type double patenting rejection is respectfully requested.

Claims 11, 15, 17, and 19 were rejected under 35 U.S.C. § 102(b) as anticipated by Bechtel et al., U.S. Pat. Pub. No. 2002/0043612 (“Bechtel”). Claim 15 has been canceled. The anticipation rejection of claims 11, 17 and 19 should be withdrawn for at least the following reasons.

To reject a claim under 35 U.S.C. § 102(b), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the

claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)). To the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2:112; emphasis in original; and see Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'l. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Amended claim 11 recites, in relevant parts, “automatically performing at least one of the following as a function of the sensor signal: (i) switching off the at least one radiation source if a distance to the at least one object is less than a predetermined limiting value, and (ii) regulating a radiation intensity of the radiation source as a function of an approach of the vehicle to the at least one object, wherein the approach is determined from the sensor signal.” Claim 19 recites substantially similar features as the above-recited features of claim 11. As acknowledged by the Examiner in connection with claim 14, Bechtel does not suggest switching off the radiation source if a distance to an object is less than a limiting value. (Office Action, p. 9). More fundamentally, in contrast to the Examiner’s contention, nothing in the actual disclosure of paragraphs [0038] and [0041] of Bechtel suggests automatically performing at least one of switching off a radiation source or regulating a radiation intensity of the radiation source as a function of the sensor signal. In addition, although the Examiner contends in connection with claim 17 that paragraphs [0039]-[0040] of Bechtel teaches that “the radiation source is one of switched off and regulated as a function of the approach to the at least one object,” the only disclosure in the cited section of Bechtel that even remotely relates to the claimed regulation is the statement that “system 36 also generate[s] automatic headlamp control signal 42” (paragraph [0039]), there is absolutely no suggestion in Bechtel that the radiation intensity of the radiation source is regulated “as a function of an approach of the vehicle to the at least one object,” let alone that any “approach of the vehicle to the at least one object” is in any way ascertained or used for the radiation source regulation.

For at least the foregoing reasons, claims 11, 17 and 19 are allowable over Bechtel.

Claims 12 and 20 were rejected under 35 U.S.C. § 103(a) as unpatentable over Bechtel in view of U.S. Pat. Pub. No. 2002/0181249 (“Holz”). Claims 12 and 20 depend on claims 11 and 19, respectively. As noted above, Bechtel clearly does not anticipate parent claims 11 and 19. In addition, the disclosure of Holz clearly does not remedy the deficiencies of Bechtel as applied against parent claims 11 and 19. Therefore, the overall teachings of Bechtel and Holz fail to render dependent claims 12 and 20 obvious.

Claim 13 was rejected under 35 U.S.C. § 103(a) as unpatentable over Bechtel, in view of U.S. Pat. No. 6,611,610 (“Stam”), and in further view of U.S. Patent No. 6,226,389 (“Lemelson”). Claim 13 depends on claim 11. As noted above, Bechtel clearly does not anticipate parent claims 11. In addition, the secondary Stam and Lemelson references do not remedy the deficiencies of Bechtel as applied against parent claim 11.

Claims 14, 16, and 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over Bechtel in view of Bos. Since the features of claim 14 have been incorporated into independent claim 11, Applicant will address claim 11, 16 and 18 in connection with the present rejection. Applicant notes that the rejection should be withdrawn for at least the following reasons.

With respect to the features of claim 14, which features are now incorporated in amended claim 11, the Examiner contends that Bos teaches “dimming the radiation source if a distance to the at least one object is less than a limiting value (col. 4, lines 24-64),” and that this teaching of Bos would suggest the claimed “deactivation” of the radiation source. However, as clearly indicated in the Abstract and col. 2, l. 60-64, the “dimming” mentioned in Bos refers to switching to a low beam from a high beam: “headlamps are modulated between high and low beams in response to the distance between the sensed object or light source . . . and the imaging array sensor” (col. 2, l. 60-64). Furthermore, Bos clearly does not indicate that any distance “limiting value” is involved in the “dimming” decision. Accordingly, in contrast to the Examiner’s conclusory assertion, the “dimming” disclosed in Bos has no logical connection to a complete deactivation of the headlamp, let alone any connection to “switching off the at least one radiation source if a distance to the at least one

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object is less than a predetermined limiting value." For at least this reason, the overall teachings of Bechtel and Bos do not render claim 11 obvious.

With respect to the features of claim 16 (which now depends on claim 11), to the extent that the Examiner relies on the Abstract and col. 1, lines 48-65 of Bos as allegedly disclosing the claimed features, this contention is clearly incorrect. Bos merely refers to switching between a high beam and a low beam based on a distance from a vehicle to an object, but Bos does not disclose the claimed feature that "the radiation intensity is approximately proportional to the approach to the at least one object." In addition, as noted above, Bos does not remedy the deficiencies of Bechtel as applied against parent claim 11. Accordingly, the overall teachings of Bechtel and Bos do not render claim 16 obvious.

Claim 18 depends on claim 11. As noted above, Bechtel does not anticipate parent claim 11. In addition, Bos does not remedy the deficiencies of Bechtel as applied against parent claim 11. Accordingly, the overall teachings of Bechtel and Bos do not render claim 18 obvious.

CONCLUSION

In light of the foregoing, Applicants respectfully submit that all pending claims are in condition for allowance. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application is therefore respectfully requested.

Respectfully submitted,

KENYON & KENYON LLP



(R. No.
26,197)

Dated: February 27, 2009

By: JOHN LEE for Gerard Messina
Gerard A. Messina (Reg. No. 35,952)
One Broadway
New York, NY 10004
(212) 425-7200

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